

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
MICHAEL FRANCHINO,

Plaintiff,

- against -

**AFFIDAVIT OF**  
**JESSICA C. MOLLER**

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW  
YORK, d/b/a ARCHCARE,

15-CV-06299 (VLB)

Defendant.  
----- X

STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NASSAU     )

Jessica C. Moller, being duly sworn, deposes and says that:

1. I am an attorney in the law firm of Bond, Schoeneck & King, PLLC, counsel for Defendant ArchCare (improperly sued herein as "The Roman Catholic Archdiocese of New York d/b/a ArchCare") in the above captioned matter. This affidavit is submitted in support of ArchCare's motion to dismiss the complaint.

2. Attached hereto as "Exhibit A" is a copy of the Charge of Discrimination that Plaintiff filed with the United States Equal Employment Opportunity Commission.

  
\_\_\_\_\_  
JESSICA C. MOLLER

Sworn to before me this  
27<sup>th</sup> day of October 2015

  
\_\_\_\_\_  
Notary Public

KARIN BAILEY  
Notary Public, State of New York  
No. 31-4916675  
Qualified in Nassau County  
Commission Expires December 28, 2017

# Exhibit “A”

EEOC Form 5 (11/2009)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

520-2015-01408

New York City Human Rights Commission

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Michael Franchino

Home Phone (Incl. Area Code)

(914) 907-0772

Date of Birth

04-21-1947

Street Address

20 Hovenkamp Avenue,

City, State and ZIP Code

Nanuet, NY 10954

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)

Name

ArchCare and its Vice President, Hugo Pizarro (aider &amp; abetter)

No. Employees, Members

500+

Phone No. (Incl. Area Code)

(646) 633-4700

Street Address

205 Lexington Avenue, 3rd Floor, New York, NY 10016

City, State and ZIP Code

Name

Roman Catholic Archdiocese of New York

No. Employees, Members

10000+

Phone No. (Incl. Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE☐ COLOR☒ SEX☐ RELIGION☒ NATIONAL ORIGIN☒ RETALIATION☒ AGE☐ DISABILITY☐ GENETIC INFORMATION☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

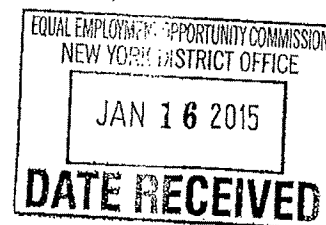
Latest

Sep 3, 2014

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

See attached Charge of Discrimination.



I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Date

Charging Party Signature

NOTARY - When necessary for State or Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

Michael D. Diederich, Jr.

NOTARY PUBLIC, New York State  
Reg. # 4936132, Rockland County  
Comm'n expires 13 June 2014

U.S. EQUAL OPPORTUNITY EMPLOYMENT COMMISSION

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MICHAEL FRANCHINO,

*Charging Party,*

-against-

**EEOC Charge of  
Discrimination**

ARCHCARE, THE ROMAN CATHOLIC  
ARCHDIOCESE OF NEW YORK, AND  
HUGO PIZARRO AND LYDIA MERCADO-BOSWICK  
(as an aiders and abettors),

*Respondents.*  
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State of New York :  
County of Rockland: <sup>SS</sup>

MICHAEL FRANCHINO, being duly sworn, deposes and states under penalty of perjury  
as follows:

1. I am the Complainant herein, and this is my charge of discrimination against ARCHCARE ("ArchCare"), with offices located at 205 Lexington Avenue, 3rd Floor New York, NY 10016. Upon information and belief, ArchCare is a part of the Roman Catholic Archdiocese of New York.
2. ArchCare management officials Hugo Pizarro and Lydia Mercado-Boswick aided and abetted this discrimination, in violation of New York law.
3. I request that this charge be cross-filed with the N.Y.S. Division of Human Rights and/or New York City Commission on Human Rights as a Complaint of Discrimination,
4. I reside, and have at all times relevant herein have resided, at 20 Hovenkamp Avenue, Nanuet, NY 10954.
5. I believe that I was discriminated against by ArchCare on the basis of a) my age and b) my gender.
6. I am 67 years of age, and my date of birth is in 1947.
7. My date of hire by ArchCare was August 25, 2008.
8. ArchCare terminated my employment on or about September 3, 2014.
9. I was terminated by ArchCare after 8 years of faithful employment by the Archdiocese (6 years with ArchCare) as a human resources professional.

10. As evidenced by my performance reviews, I had an exemplary and unblemished employment record during the whole period of time of my employment.

Evidence of Age and Gender Discrimination

11. Sham reasons have been offered for my termination. The reasons offered are a pretext for discrimination.

12. I was terminated because of my age, and also because of my gender and national origin.

13. I was frequently the brunt of embarrassing and hurtful age related jokes by my superiors and peers on conference calls, company sponsored functions and business meeting, making fun of the fact that, at age 67, I had four children who were barely teenagers. There were also e-mails poking fun of me and my age.

14. The pretext of my termination was a younger Hispanic woman, Ms. Lydia Mercado-Boswick, who sought revenge against me, because of my proper performance of my job as proscribed by my superiors.

15. Upon receipt of a scurrilous letter to my superiors by Ms. Mercado-Boswick, my superiors apparently decided that it was more advantageous to side with her because she is a young, Hispanic woman with a disability, and thus firing her (as she deserved and as was the desire of upper management for her poor work performance and creation of a hostile work environment in her department), would have created a larger liability exposure for ArchCare than firing me (an older white male).

16. This amounts to discrimination in favor of Ms. Mercado-Boswick, and against me, based upon my age, gender and national origin.

17. Further evidence that age was the cause of my unlawful termination, additionally motivated by gender bias, where Respondents' completely unfounded allegations—designed to embarrass and harass me—that I acted toward others as essentially a “dirty old man.”

18. This is offensive stereotyping, and maliciously undertaken to coerce me into agreeing to a manifestly unfair and inadequate severance agreement when viewed against other severance agreements offered to employees terminated “for cause” and with far less service than myself.

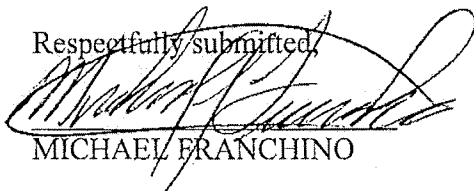
19. I remain unemployed as a result of my wrongful termination, and request reinstatement and back pay, as well as compensation for my emotional damages related to Respondents' malicious actions.

20. ArchCare's termination of my employment was without any just cause, and was done, I believe, solely because of impermissible discrimination.

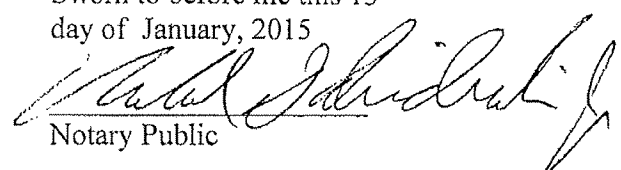
21. It is my belief that if I were a younger person, that I would not have been fired. I also believe that gender motivated the adverse action. In my view, my employment termination was manifestly discriminatory.

22. Wherefore, I request that the EEOC determine that ArchCare discriminated against me, and provide me with appropriate relief in accordance with law.

Respectfully submitted,

  
MICHAEL FRANCHINO

Sworn to before me this 13<sup>th</sup>  
day of January, 2015

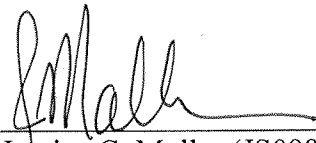
  
Notary Public

**Michael D. Diederich, Jr.**  
NOTARY PUBLIC, New York State  
Reg. # 4936132, Rockland County  
Comm'n expires 13 June 2016

### CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2015 the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules on Electronic Service upon the following parties and participants:

Michael D. Diedrich, Jr.  
*Attorney for Plaintiff*  
361 Route 210  
Stony Point, NY 10980



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Jessica C. Moller (JS0981)  
BOND, SCHOENECK & KING, PLLC  
*Attorneys for ArchCare*  
1010 Franklin Avenue, Suite 200  
Garden City, New York 11530  
(516) 267-6300; [jmoller@bsk.com](mailto:jmoller@bsk.com)